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**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 99-0463 MVE
MOTOR VEHICLE EXCISE TAX
For The Tax Periods: 1990 through 1998**

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ISSUES

I. Motor Vehicle Excise Tax – Imposition

Authority: IC 9-18-2-1, IC 9-13-2-78, IC 6-8.1-5-1.

The Taxpayer protests the imposition of the motor vehicle excise tax on their 1990 and 1992 Cadillacs.

II. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2(c).

The Taxpayer protests the imposition of the negligence penalty.

STATEMENT OF FACTS

Taxpayers were assessed Motor Vehicle Excise Tax on a 1990 and 1992 Cadillac. The Taxpayers have provided the following information:

- 1) Florida voter's registration
- 2) Copy of Florida driver's license/spouse maintains Florida nonresident license
- 3) Florida saltwater products license
- 4) Receipt for Florida Homestead Exemption

- 5) Receipts for 1990 and 1992 Cadillac showing sales tax paid to Florida
- 6) Florida vehicle registration for 1990 Cadillac for years 1990 to 1998
- 7) Florida vehicle registration for 1992 Cadillac for years 1992 to 1998
- 8) Copies of 1991 and 1998 Florida notice's of ad valorem taxes and non-ad valorem assessments.

Taxpayer filed IT-40 Full Year Resident Returns for 1990 to 1998. However, Taxpayers filed an IT-40 X Amended Return for 1998 claiming to be Florida residents. The Taxpayers own a small business in Indiana. More facts supplied as necessary.

I. **Motor Vehicle Excise Tax: Imposition**

DISCUSSION

IC 9-13-2-78 defines "Indiana resident" as a person who is one of the following:

- (1) A person who has been living in Indiana for a least one hundred eighty-three (183) days during a calendar year and who has a legal residence in another state. However, the term does not include a person who has been living in Indiana for any of the following purposes:
 - (A) Attending an institution of higher education
 - (B) Serving on active duty in the armed forces of the United States.
- (2) A person who is living in Indiana if the person has no other legal residence.
- (3) A person who is registered to vote in Indiana.
- (4) A person who has a child enrolled in an elementary or secondary school located in Indiana.
- (5) A person who has more than one-half (1/2) of the person's gross income derived from sources in Indiana... However, a person who is considered a resident under this subdivision is not a resident if the person proves by a preponderance of the evidence that the person is not a resident under subdivisions (1) through (4).

Also, IC 6-8.1-5-1 specifically provides that notice of a proposed assessment is *prima facie* evidence that the Department's claim for the unpaid tax is valid. It is the burden of the taxpayer to prove that the proposed assessment is wrong. In support of their protest and to show they were Florida residents, the Taxpayers submitted documentary proof that they purchased, and registered the 1990 and 1992 Cadillacs in the State of Florida. Furthermore, the Taxpayers provided copies of documents showing they owned property, obtained driver's licenses, registered to vote, and paid sales and property taxes in the State of Florida.

However, over one-half (1/2) of the Taxpayers' gross income was derived from Indiana sources. Additionally, the Taxpayers conceded that their children attended Indiana secondary schools. The Taxpayers were also present in Indiana from approximately March to September (Labor Day) for the years in question. Although the Taxpayers filed an amended return for 1998, their 1990 to 1997 returns are Indiana Full Year Resident returns. By filing an Indiana Full-Year Resident tax returns, the Taxpayers have conceded Indiana residency. Consequently, for all the

aforementioned reasons, and pursuant to Indiana Code Section 9-13-2-78, the Department finds that the Taxpayer has been an Indiana resident for the tax years 1990 through 1998.

Also, pursuant to Indiana Code Section 9-18-2-1:

- (d) An Indiana resident who has a legal residence in a state that is not contiguous to Indiana may operate a motor vehicle for not more than sixty (60) days without registering the motor vehicle in Indiana.

The Taxpayers concede that the Cadillacs were driven in Indiana during the periods in question and were transferred back to Indiana because of the cost of maintaining auto insurance in Florida.

Therefore, the Taxpayer's protest must respectfully be denied.

FINDING

The Taxpayer's protest is respectfully denied.

II. Tax Administration – Penalty

DISCUSSION

IC 6-8.1-10-2.1(d) allows a penalty to be waived upon a showing that the failure to pay the deficiency was due to reasonable cause. Also, 45 IAC 15-11-2(c) requires that in order to establish reasonable cause, the taxpayers must show that they exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed. The Department finds that the Taxpayers demonstrated reasonable cause for their failure to pay tax.

FINDING

The Taxpayers' protest of the penalty is sustained.